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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,193	08/15/2001	Masato Katayama	HIR-139	1385

7590
Lorusso & Loud
440 Commercial Street
Boston, MA 02109

10/06/2004

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/931,193	Applicant(s) KATAYAMA ET AL.	
	Examiner Alton N. Pryor	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 5-11,13,15-18 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 5,6,9,11,15-18,20 and 23 is/are rejected.
- 7) ☐ Claim(s) 7,8,10,13,21,22 and 24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5,9,11,17,20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ahmad et al (Physiologia Plantarum, 1987, 69(1), 137-40). Ahmad teaches a method of applying 4-chloroindole-3-acetic acid to pea cuttings (shoot, leaf) in order to promote root growth. It is inherent that the 4-Cl-IAA would be administered to the cuttings in a carrier (solvent). See abstract.

Claims 5,9,11,17,20 are rejected under 35 U.S.C. 102(b) as being anticipated by Katayama (Bioscience, Biotechnology, and Biochemistry, Department, 2000, 64(4) 808-15). Katayama teaches a method of applying 4-chloroindole-3-acetic acid to cuttings in order to promote root growth. It is inherent that the 4-Cl-IAA would be administered to the cuttings in a carrier (solvent). See abstract.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,15,16,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahmad as applied to claims 5,9,11,17,20 above. Ahmad teaches all that is recited in claims 6,15,16,23 except for the invention comprising the instant amount of 4-Cl-IAA and an automated sprinkling system. One having ordinary skill in the art would have been motivated to determine the optimum concentration of 4-Cl-IAA. One would have been expected to do this in order to make the most effective invention for promoting root growth of rootless plant cuttings. With respect to the delivery of the composition as a spray, the prior art uses various methods to deliver chemicals to plant cuttings including the spraying.

Claims 6,15,16,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katayama as applied to claims 5,9,11,17,20 above. Katayama teaches all that is recited in claims 6,15,16,23 except for the invention comprising the instant amount of 4-Cl-IAA and an automated sprinkling system. One having ordinary skill in the art would have been motivated to determine the optimum concentration of 4-Cl-IAA. One would have been expected to do that in order to make the most effective invention for promoting root growth of rootless plant cuttings. With respect to the delivery of the composition as a spray, the prior art uses various methods to deliver chemicals to plant cuttings including the spraying.

Claim Objection

Claims 7,8,10,13,22,21,24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

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limitations of the base claim and any intervening claims. The prior art does not teach or suggest the limitations of the instant claims.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alton Pryor
Primary Examiner
AU 1616